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BEFORE THE ARIZONA CORPORATION COMMISSION

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Arizona Corporation Commission

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MAY 20 2002

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IN THE MATTER OF THE GENERIC
PROCEEDING CONCERNING ELECTRIC
RESTRUCTURING ISSUES

DOCKET NO. E-00000A-02-0051

IN THE MATTER OF ARIZONA PUBLIC
SERVICE COMPANY'S REQUEST FOR
VARIANCE OF CERTAIN REQUIREMENTS
OF A.A.C. R14-2-1606

DOCKET NO. E-01345A-01-0822

IN THE MATTER OF THE GENERIC
PROCEEDING CONCERNING THE ARIZONA
INDEPENDENT SCHEDULING
ADMINISTRATOR

~~DOCKET NO. E-00000A-01-0050~~

IN THE MATTER OF TUCSON ELECTRIC
POWER COMPANY'S APPLICATION FOR A
VARIANCE OF CERTAIN ELECTRIC
COMPETITION RULES COMPLIANCE
DATES

DOCKET NO. E-01933A-02-0069

IN THE MATTER OF THE APPLICATION OF
TUCSON ELECTRIC POWER COMPANY FOR
APPROVAL OF ITS STRANDED COST
RECOVERY

DOCKET NO. E-01933A-98-0471

THE ARIZONA COMPETITIVE POWER ALLIANCE'S
COMMENTS TO UTILITY DIVISION STAFF'S TOPICS

1 The Arizona Competitive Power Alliance (hereinafter referred to as the
2 "Alliance"), by and through its attorneys, hereby provides Staff with its comments to
3 the Utility Division Staff's ("Staff") topics listed in Staff's May 13, 2002 Request for
4 A Procedural Order¹:

5 **A. Criteria for Selecting the Independent Evaluator (IE).**

6 The general criteria for selecting an IE to assist the Staff through the
7 Track B process are likely largely non-controversial:
8

- 9 1. The IE selected should not have any financial interest in, represent or have
10 a financial interest in any of the following entities²:
- 11 a. Affected Utilities;
 - 12 b. Electric Service Providers ("ESP");
 - 13 c. Merchant power providers who own or are constructing a power
14 plant in the State;
 - 15 d. Participants in the competitive solicitation process for the first two
16 years after the competitive solicitation process is initiated;
 - 17 e. The Salt River Project;
 - 18 f. Any Regional Transmission Organization;
 - 19
 - 20
 - 21

22 ¹ The views expressed herein represent the views of the Alliance but not necessarily the views of
23 each of the individual members in all of the issues addressed. As a result of time constraints
24 arising from Staff's request that comments be submitted by May 20, 2002, Alliance member
Panda Gila River, L.P. submitted separate comments and does not join this filing.

25 ² This criteria should not be construed to preclude an "entity" from acting as IE, so long as the
26 entity can affirmatively demonstrate that the employees that would not be eligible under this
criteria can and will be totally isolated from this process and the prior involvement of the entity's
employee will not, in any manner, impact the IEs involvement in this process.

2. The IE selected should have prior experience in developing policies and procedures for competitive solicitation in the electric power industry.
3. The IE selected should have actual, hands-on, practical experience in past competitive procurements.
4. The IE selected should have experience with or significant knowledge about the southwest wholesale power markets.

B. The Role of the IE.

It is important to recognize the varying roles an Independent Evaluator/Consultant can perform in this proceeding. Staff's May 13, 2002 pleading focuses on the IE's role as a facilitator/advisor to Staff in formulating issues, discussion thereon and development of recommendations for the consideration of the Arizona Corporation Commission ("Commission"). In this role, the IE is needed to assist Staff in translating and detailing the Commission's broad policy goals for competitive solicitation processes, as well as facilitating consensus, including recommending solutions to differences that will, no doubt, emerge during the Track B proceeding. While Alliance believes such a role is appropriate for the IE, it is critical to the success and ultimate fairness of the competitive solicitation process that an IE also play an active role in evaluating the competitive solicitation process itself. In other words, an IE should be utilized by the Commission to evaluate the Requests for Proposal (or other solicitation process) utilized by the UDC in soliciting and the selections made pursuant thereto. It may be desirable for a single IE to perform both roles for sake of continuity. However, it is premature to attempt to select an IE based upon participation in the actual competitive solicitation process, since the guidelines

1 and minimum requirements for the competitive solicitation process have not yet been
2 developed. Nevertheless, the guidelines and minimum requirements ultimately
3 developed by the Commission for the competitive solicitation process must recognize
4 the critical need for such an IE as a fundamental part of the competitive solicitation
5 process, itself.

6 Alliance also believes that the Commission promulgated Rule 1606(B)
7 intending that guidelines for the competitive procuring process be designed and
8 developed by a "consensus" of the market participants themselves, subject to the
9 review, approval and administration by the Commission. The idea is that a process
10 implemented that reflects a consensus of the market participants has a greater
11 likelihood of success compared to a process forced upon the market participants
12 without their input and agreement. Thus, Alliance believes that the IE's role under
13 Track B should be both that of a facilitator and an evaluator.

15 Under the consensus approach, the IE works directly with the market
16 participants on the various issues and elements of a competitive power solicitation
17 process. In order to reach an acceptable level of consensus among the market
18 participants, each stakeholder would have an opportunity to vote in favor or against
19 the various aspects of the competitive solicitation process. Every stage of the process
20 would be under the review of IE and Staff. Staff, with the IE's assistance, would
21 prepare consensus guidelines and minimum requirements for the competitive
22 solicitation processes. The market participants would be permitted to comment on a
23 draft. Thereafter, the Staff, with the IE's assistance would submit recommended
24

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1 guidelines and minimum requirements for the competitive solicitation processes to the
2 Commissioners for review and possible approval at Open Meeting.

3 The process for developing implementation guidelines is well rehearsed
4 by this Commission. Successful implementation guidelines have been developed
5 recently in the Commission's Process Standardization Working Group ("PSWG") and
6 the Commission's Environmental Portfolio Standard ("EPS") Working Group. To
7 this end, Alliance believes that one of the tasks to be performed at the May 24, 2002
8 meeting of participants is the modification of the PSWG's statement of Principles,
9 Rules and Voting Qualifications for utilization in the Track B proceeding.
10

11 **C. Payment Arrangements for the IE.**

12 The primary methods of paying for the IE include: (i) Commission
13 funding, (ii) Commission ordered or voluntary funding by the UDCs, and (iii)
14 voluntary funding by market participants through a joint funding agreement. To the
15 extent the Commission has funding and any required procurement process can be
16 completed within the accelerated time constraints of Track B, Commission funding is
17 favored because it eliminates any perception that the market participants control the
18 IE. If such funding is not available or impracticable due to time constraints, then
19 funding by the UDCs or all market participants, including the UDCs can be
20 implemented through a joint funding agreement. Any joint funding agreement
21 mechanism should establish the general scope of work for the IE, clearly delineate
22 that the IE is an independent contractor that is responsible to Staff and set a maximum
23 funding obligation. Further any funds provided under the joint funding agreement
24

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1 should be reimbursable by inclusion of the IEs cost as part of the bid fees charged
2 under the competitive solicitation process that is implemented by the Commission.

3 **D. Description of the Various Types of Competitive Solicitations and**
4 **their Attributes.**

5 Based upon the comments filed by the various parties, Alliance was of
6 the impression that the working group process under the Track B proceeding would
7 be used, in part, to identify and evaluate in detail the potential methods for conducting
8 a competitive solicitation through the IE. At this point, Alliance believes there are
9 three basic methods of securing power in a competitive wholesale market: Requests
10 for Proposals (RFPs), Auctions, and Bilateral contracting. A general listing of the
11 pros and cons of each approach is set forth in Exhibit A. Of course, there are various
12 options available under each basic approach (such as sealed bid auctions or
13 descending/ascending clock auctions). All three processes have many similarities.
14
15

16 As recognized by Arizona Public Service, each competitive process is
17 dependent on the following threshold issue: What is to be procured? While this
18 decision is an inherent responsibility of the UDC, the Commission must adopt
19 guidelines and minimum requirements to ensure that the definition of what is to be
20 procured does not eliminate effective competition. The guidelines and minimum
21 requirements providing for staggered contract terms, multiple initial delivery dates
22 and a mix of resources will help to ensure a competitive marketplace not only for the
23
24

25 ///

1 first competitive solicitation, but for the ongoing competitive solicitation process
2 anticipated by Rule 1606.

3 RESPECTFULLY submitted this 20th day of May, 2002.

4 MILLER LaSOTA & PETERS, PLC

5
6
7 By:

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John A. LaSota, Jr.

with P. R.
Attorneys for The Arizona
Competitive Power Alliance

EXHIBIT A

| Competitive Procurement Method | Pros | Cons |
|--------------------------------|---|---|
| Request for Proposal (RFP) | <p>Flexibility in design: Procurement can include bilateral negotiations and/or auctions depending upon RFP author's preference</p> <p>Flexibility in product: RFP can utilize multiple products and contract terms</p> <p>Allows creativity in responses</p> | <p>Responses not transparent to participants leading to less vigorous competition</p> <p>RFP subject to author's design "bias"</p> <p>Can be time consuming to reach final outcome</p> <p>May require additional Staff time for review/approval of final outcome</p> |
| Auction | <p>Prices/product are transparent to bidders which ensures most efficient and competitive outcome</p> <p>Generally the fastest process (matter of hours or days versus weeks or greater)</p> <p>Auction can be viewed "in progress" to minimize Staff review time</p> | <p>Single product requires any creative design up front; little room for creativity in design once product has gone to auction; can be expensive and time consuming to initially set up relative to an RFP</p> |
| Bilateral Contract | <p>Negotiated settlement results in best interest of both participating parties</p> <p>Flexibility in design, products, and contract terms</p> | <p>Negotiations are not transparent to other competitors</p> <p>Potential for fewest number of competitors</p> <p>Difficult for post-contract review of "second-best" proposals</p> <p>Can be time consuming to reach final outcome</p> <p>May require additional Staff time for review/approval of final outcome</p> |

1 Original and eighteen (18) copies of the foregoing document filed with service list
2 this 20th day of May, 2002, with:

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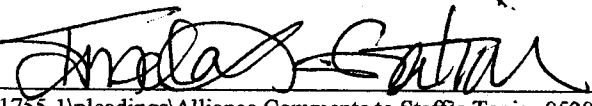
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